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REMARKS

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Claims 1-107 are pending in the instant application, of which claims 43-50, 52, 53, and 55-107 are withdrawn from consideration. Claims 1-107 have been cancelled without prejudice and applicant reserves the right to pursue these claims in continuation or divisional applications. New claims 108-117 have been added in the present paper. No new matter is introduced in the new claims. Applicant understands that the Office Action carries a three-month shortened statutory period for response with extensions of time available, and Applicant herewith petitions for a three-month extension of time.

At the outset, Applicant kindly thanks the Examiner for the careful review and analysis of the specification, sequences, sequence listings, and pending claims.

New Matter rejection under 35 U.S.C. § 132

On page 2 of the Office Action mailed September 14, 2006, the Examiner objects to the amendment of November 8, 2004, under 35 U.S.C. § 132 "because it introduces new matter into the disclosure." In particular, the Examiner states that "Applicant provides SEQ ID NO:10 as 244 amino acids rather than 245 amino acid in the claimed provisional applications. However, the corresponding table legend to the sequences does not correspond [to] the sequence numbering. For example: T8: amino acids 68³-94 of SEQ ID NO:39 in the table legend for ³ in T8, lysine has been substituted for the leucine residue at position 69 of the full-length Tumstatin, however this position now is 68." (Original emphasis).

As Applicant explained to the PTO in the Substitute Sequence Listing and Preliminary Amendment in Response to Notice to Comply filed October 16, 2002, the sequences included in the pending application contained inadvertent errors inconsistent with the parent applications. That Preliminary Amendment included some twenty-four pages of amendments to the specification and a thorough explanation demonstrating that the amendments conformed to the parent applications, corrected inadvertent errors, and did not constitute new matter. It appears to the undersigned, however, that the Preliminary Amendment and subsequent Amendments to the specification have contained errors leading to the inconsistencies which the Examiner has pointed out as new matter. Applicant suggests that it would be in the public interest for the Examiner to please request that Applicant submits a Substitute Specification with the correct sequence information that would clearly

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conform to the parent applications, correct inadvertent mistakes that are now problematic to track and amend, and provide a better record for the Examiner and public.

To the extent that allowable subject matter of the instant new claims obviate the new matter objections and rejections to the specification and claims, Applicant nevertheless requests that the Examiner allow for a substitute specification to better serve the public by providing an accurate reflection of the invention.

Rejections under 35 U.S.C. § 112

The Examiner, on page 2 of the Office Action, rejects claims 1-6, 10-19, 29-33, 51, and 54, under 35 U.S.C. § 112, second paragraph, as "indefinite."

On page 3 of the Office Action, the Examiner rejects claims 1-23, 29, 31-37, 51, and 54, under 35 U.S.C. § 112, first paragraph, as "a New Matter rejection."

Next, on page 4 of the Office Action, the Examiner rejects claims 1-23, 29, 31-37, 51, and 54, under 35 U.S.C. § 112, first paragraph, for lack of enablement.

The Examiner, on page 7 of the Office Action, rejects claim 20 under 35 U.S.C. § 112, first paragraph "as containing subject matter which was not described in the specification in such a way as to reasonable convey ... that the inventor ... had possession of the claimed invention."

Applicant traverses all of the § 112 rejections. The cancellation of claims 1-107, however, renders the rejections moot. Hence, Applicant requests that these § 112 rejections be withdrawn.

Rejections under 35 U.S.C. § 102

On page 8 of the Office Action, the Examiner rejects claims 6, 20, and 34 under 35 U.S.C. § 102(b) as "anticipated by Kalluri et al (J. Biol. Chem. 271:9062-9068, 1996). Applicant traverses the rejection. In an effort to expedite prosecution, however, Applicant has cancelled claims 1-107. Hence, Applicant requests that this § 102 rejection be withdrawn.

Rejections under 35 U.S.C. § 103

On page 9 of the Office Action, the Examiner rejects claims 6-7, 20-21, and 34-35 under U.S.C. § 103(a) as "unpatentable over Kalluri ... in view of U.S. Patent 5,858,670."

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Next, on page 10 of the Office Action, the Examiner rejects claims 6, 8, 20, 22, 34, and 36 under U.S.C. § 103(a) as “unpatentable over Kalluri ... in view of U.S. Patent 5,326,875.”

The Examiner, on page 10 of the Office Action, rejects claims 6, 9, 20, 23, 34, and 37 under U.S.C. § 103(a) as “unpatentable over Kalluri ... in view of U.S. Patent 5,807,821.”

Applicant traverses all of the § 103 rejections. In an effort to expedite prosecution, however, Applicant has cancelled claims 1-107. The cancellation of these claims renders these rejections moot. Hence, Applicant requests that these § 112 rejections be withdrawn.

Double Patenting Rejections

On page 12 of the Office Action, the Examiner rejects claims 1, 6, 15, 16, 20, 29, 30, 34, 51, and 54 “on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4-8 of U.S. Patent No. 6,962,974.”

The Examiner, also on page 12 of the Office Action, rejects claims 6-7, 20-21, and 34-35 “on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4-8 of U.S. Patent No. 6,962,974 in view of U.S. Patent 5,858,670.”

On page 13 of the Office Action, the Examiner rejects claims 6, 8, 20, 22, 34, and 36 “on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4-8 of U.S. Patent No. 6,962,974 in view of U.S. Patent 5,326,875.”

Also on page 13 of the Office Action, the Examiner rejects claims 6, 9, 20, 23, 34, and 37 “on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4-8 of U.S. Patent No. 6,962,974 in view of U.S. Patent 5,807,821.”

Applicant traverses these double patenting rejections. Nevertheless, in an effort to expedite prosecution, Applicant has cancelled claims 1-107, rendering these rejections moot. Therefore, Applicant respectfully requests that these rejections be withdrawn.

Allowable Subject Matter

The Examiner, on page 14 of the Office Action, states that “Claims 24-28 and 38-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.”

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Although claims 24-28 and 38-42 have been cancelled, new claims 108-117 conform to the Examiner's suggestion for these claims in that they include the relevant limitations of the base claims, avoid rejected subject matter, and further clarify (by inclusion) the amino acid sequences of the claimed polypeptides. Hence, Applicant looks forward to favorable consideration of these claims.

CONCLUSION

Applicant respectfully requests reconsideration of this application and allowance of the pending claims in view of the above amendment and remarks.

Except for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully submitted,

March 13, 2007
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